

ALEXANDER B. TRUEBLOOD (Cal. Bar No. 150897)
TRUEBLOOD LAW FIRM
10940 Wilshire Boulevard, Suite 1600
Los Angeles, California 90024
Telephone: (310) 443-4139
Facsimile: (310) 943-2255

Attorneys for Plaintiff
KYLE BRITTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KYLE BRITTON,

Plaintiff,

vs.

ABC LEGAL SERVICES, INC.,
MIDLAND FUNDING LLC, and
HUNT & HENRIQUES, a law
partnership,

Defendants.

Case No: 5:17-CV-7070-LHK

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF THE FAIR
DEBT COLLECTION PRACTICES
ACT**

1 Plaintiff Kyle Britton hereby complains against defendants ABC Legal
2 Services, Inc. (“ABC”), Midland Funding LLC (“Midland”), and Hunt &
3 Henriques, a law partnership (“Hunt & Henriques”), and alleges on information and
4 belief as follows:

5 **OPERATIVE FACTS**

6 1. Defendant Midland is a debt collection agency, and acquired a
7 defaulted credit card debt of plaintiff’s, which was originally owing to HSBC Bank
8 Nevada, N.A. Plaintiff’s credit card debt to HSBC was incurred primarily for
9 personal, family, or household use.

10 2. On June 4, 2014, defendant Midland sued plaintiff on the alleged
11 credit card debt in the Los Angeles Superior Court, in the case styled Midland
12 Funding LLC v. Britton, Los Angeles Superior Court Case No. 14A14207.
13 Midland was represented by defendant Hunt & Henriques, a law firm which
14 specializes in debt collection.

15 3. On or about May 28, 2014, Hunt & Henriques, through its attorney
16 Charles Glauberman, signed a statement of venue under penalty of perjury
17 affirming that “The address of the defendant is 1263 Barry Avenue, Apt. 5, Los
18 Angeles, California 90025-1726.”

19 4. Hunt & Henriques filed the statement of venue with the Los Angeles
20 Superior Court.

21 5. At the time the statement of venue was filed, plaintiff did not live at
22 1263 Barry Avenue, Apt. 5, Los Angeles, California.

23 6. At the time the statement of venue was filed, the address at 1263 Barry
24 Avenue, Apt. 5, Los Angeles, California was not plaintiff’s mailing address.

25 7. Hunt & Henriques hired defendant ABC to effect service of process of
26 the summons and complaint in Midland Funding LLC v. Britton.

27 8. Defendant ABC claims it made several unsuccessful attempts to serve
28 plaintiff prior to June 14, 2014, and falsely claims that it substitute-served plaintiff

1 on June 14, 2014.

2 9. On June 17, 2014, after a supposed substitute service was completed
3 on June 14, 2017, ABC created a fraudulent affidavit which affirmed under penalty
4 of perjury that ABC had served plaintiff by substituted service on June 14, 2014 by
5 leaving the documents with a Jane Doe at plaintiff's "dwelling house or usual place
6 of abode" at 1263 Barry Avenue, Apt. 5, Los Angeles, California.

7 10. At the time of purported substituted service, the address at 1263 Barry
8 Avenue, Apt. 5, Los Angeles, California, was not plaintiff's dwelling house or
9 usual place of abode, nor was it his usual mailing address or usual place of
10 business.

11 11. Defendant ABC also created a fraudulent "Declaration of Reasonable
12 Diligence" on June 17, 2014, after its supposed service, which stated that the Jane
13 Doe who received the summons told ABC's process server that "Subject only
14 receives mail at this address." No one at 1263 Barry Avenue, Apt. 5, Los Angeles,
15 California ever told ABC's process server that plaintiff "only" received mail at that
16 address.

17 12. On June 20, 2014, defendant Hunt & Henriques filed ABC's June 17,
18 2014 affidavit of service, and the accompanying "Declaration of Reasonable
19 Diligence," with the Los Angeles Superior Court.

20 13. On September 15, 2014, Anthony Piero, an attorney at Hunt &
21 Henriques, signed a request for entry of default judgment as to plaintiff, which
22 fraudulently stated under penalty of perjury that a copy of the request for entry of
23 default had been mailed to plaintiff's "last known address" at 1263 Barry Avenue,
24 Apt. 5, Los Angeles, California. Hunt & Henriques filed this fraudulent document
25 with the Los Angeles Superior Court on September 18, 2014. The court entered
26 plaintiff's default on September 18, 2014.

27 14. Hunt & Henriques' September 15, 2014 oath that it had mailed the
28 request for entry of default to plaintiff's "last known address" was false. The

1 address on Barry Avenue was not plaintiff's last known address.

2 15. Plaintiff did not know about the lawsuit and never received a copy of
3 the summons or complaint. He therefore did not appear or file an answer in the
4 collection lawsuit. On October 1, 2014, the Los Angeles Superior Court entered a
5 default judgment against plaintiff, and in favor of defendant Midland, in the amount
6 of \$2,155.29.

7 16. In early February, 2017, plaintiff learned for the first time of the
8 lawsuit and judgment in Midland Funding LLC v. Britton. He hired counsel to help
9 him set aside the judgment. In September, 2017, plaintiff filed a motion to set aside
10 the default and default judgment in the Los Angeles Superior Court.

11 17. The Los Angeles Superior Court denied the motion on the grounds that
12 too much time had passed to challenge the default or default judgment, but
13 expressly did not determine the issue of whether ABC's affidavit of service was
14 fraudulent. A true and correct copy of the state court's final order is attached
15 hereto as Exhibit 1.

16 18. Plaintiff is a victim of defendants' extrinsic fraud. As a result of
17 defendants' conduct, and through no fault of his own, plaintiff was fraudulently
18 deprived of an opportunity to present a claim or defense in the collection action,
19 and was fraudulently kept by defendants in ignorance of that action. Plaintiff has
20 meritorious defenses to the collection action, and was diligent in trying to set it
21 aside upon learning of it.

22 19. Plaintiff sues the defendants in this action for damages, but is not by
23 this action seeking to set aside the default or default judgment in Midland Funding
24 LLC v. Britton.

25 20. Defendant Hunt & Henriques received notice of this action within 120
26 days of its filing, and knew or should have known that this action would have been
27 brought against it, but for an inadvertent mistake by plaintiff's counsel in naming
28 Hunt & Henriques, Inc., instead of Hunt & Henriques the law partnership, in the

1 original complaint.

2 **JURISDICTION AND VENUE**

3 21. The court has original jurisdiction over this matter pursuant to 15
4 U.S.C. § 1692k(d).

5 22. Venue is proper in the Northern District of California because a
6 substantial part of the events or omissions giving rise to the claim occurred in this
7 district, and defendant Hunt & Henriques is headquartered in this district.

8 **PARTIES**

9 23. Plaintiff is a natural person over the age of 18 years and is a resident of
10 the state of California.

11 24. Defendant ABC Legal Services, Inc. is a Washington corporation that
12 does regular business in the Northern District of California.

13 25. Defendant Midland Funding LLC is a Delaware limited liability
14 company that does regular business in the Northern District of California.

15 26. Defendant Hunt & Henriques is a law partnership headquartered in
16 San Jose, California.

17 27. Except as specifically noted herein, each defendant was the agent or
18 employee of each of the other defendants and was acting within the course and
19 scope of such agency or employment. The defendants are jointly and severally
20 liable to plaintiff.

21 **FIRST CAUSE OF ACTION**

22 **(Against All Defendants for Violations of the Fair Debt Collection Practices
Act, 15 U.S.C. § 1692 et seq.).**

23 28. Plaintiff realleges and incorporates herein by reference the allegations
24 of all paragraphs above.

25 29. Plaintiff is a “consumer” who allegedly owed a “debt”, and defendants
26 are “debt collectors”, as those terms are defined at 15 U.S.C. § 1692a. Defendants
27 use instrumentalities of interstate commerce or the mails in a business the principal
28 purpose of which is the collection of any debts, and/or regularly collect or attempt

1 to collect, directly or indirectly, debts owed or due or asserted to be owed or due
2 another.

3 30. Defendants violated 15 U.S.C. § 1692e by using false, deceptive, or
4 misleading representations or means in connection with the collection of a debt.

5 31. Plaintiff is entitled to any actual damages sustained by him as a result
6 of defendants' conduct, in an amount according to proof, pursuant to 15 U.S.C. §
7 1692k.

8 32. Plaintiff is entitled to \$1,000 in statutory damages against each
9 defendant pursuant to 15 U.S.C. § 1692k. Defendants committed their violations
10 willfully and knowingly, and have frequently and persistently failed to comply with
11 the FDCPA. The nature of defendants' violations justifies the maximum statutory
12 damages award available.

13 33. Plaintiff is entitled to the costs of the action, together with a reasonable
14 attorneys fee, pursuant to 15 U.S.C. § 1692k.

15 WHEREFORE, plaintiff prays for relief as set forth below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff prays for the following relief:

- 18 1. For actual damages,
 - 19 2. For statutory damages;
 - 20 3. For pre-judgment interest to the extent permitted by law;
 - 21 4. For an award of attorneys' fees, costs and expenses incurred in the
22 investigation, filing and prosecution of this action; and
 - 23 5. For such other and further relief as the Court may deem just and proper.
- 24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury under the federal and California constitutions.

Dated: February 15, 2018

Respectfully Submitted,
TRUEBLOOD LAW FIRM

By: /s/
Alexander B. Trueblood

Attorneys for Plaintiff
KYLE BRITTON

EXHIBIT 1

FILED
Superior Court of California
County of Los Angeles

NOV 21 2017

Sherri R. Carter, Executive Officer/Clerk
By J. Carmichael Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
---COUNTY OF LOS ANGELES -- CHATSWORTH
COURTHOUSE

MIDLAND FUNDING LLC,

Plaintiff,

vs.

KYLE BRITTON,

Defendant.

Case No: 14A14207

Limited Civil Case

**~~PROPOSED~~ ORDER DENYING
MOTION TO SET ASIDE
DEFAULT AND DEFAULT
JUDGMENT**

Date: October 19, 2017

Time: 8:30 a.m.

Dept: F43

OCT 30 2017

ORDER

12/21/17

1 Defendant Kyle Britton's motion to set aside the default and default judgment
 2 came on regularly for hearing on October 19, 2017 in Department F43. After
 3 consideration of the moving and opposition papers, and the oral argument, the Court
 4 denies the motion as untimely.

5 Code of Civil Procedure § 473(d) permits the Court to set aside any void
 6 judgment or order. Although there is no express time limit to bring this statutory
 7 motion to set aside a void judgment, the courts have analogized to Code of Civil
 8 Procedure § 473.5, in determining what is a reasonable time to bring a motion under
 9 C.C.P. § 473(d). The time limit in C.C.P. § 473.5 is at a maximum, two years from
 10 entry of the original judgment. Since this judgment was entered on October 1, 2014,
 11 and this motion was brought more than two years later, the motion is untimely.

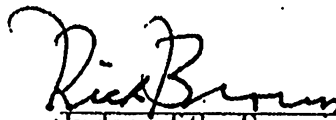
12 Defendant argues that a void judgment may be set aside at any time, even
 13 outside the two year limit of C.C.P. § 473(d), under the Court's inherent equitable
 14 powers. This is true, but only as to judgments which are void on their face. The
 15 judgment here is not void on its face, because the facts upon which defendant relies
 16 to challenge the judgment are extrinsic to the judgment, and do not appear in the
 17 court file.

18 The motion is therefore untimely, and the court need not reach the disputed
 19 issue of whether the plaintiff properly substitute-served the defendant under Code of
 20 Civil Procedure § 415.20.

21 Plaintiff is ordered to give notice of the ruling.

22
 23 SO ORDERED.

24
 25 Dated: NOV 21 2017

26  RICK BROWN
 27 Judge of the Superior Court
 28